Correspondence
Item No. 0.0d
Public Comments
April 3, 2013

Comments on April 3, 2013 PC Agenda Items

The following comments on items on the April 3, 2013 Newport Beach Planning Commission agenda are submitted by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item No. 1 Minutes Of March 21, 2013

The following corrections to the draft minutes are suggested:

Page 1

- paragraph 2 under Public Comments: "*He addressed projects within the Coastal Zone noting* ~~***that***~~ ***when*** *they are exempt from needing to apply for a Coastal Development Permit and referenced written comments relative to* ~~***modification of lot boundaries***~~ ***modifications involving the Subdivision Map Act****, noting that* ***per a recent California Supreme Court opinion*** *they* ***always*** *require a Coastal Development Permit."*

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- paragraph 4 under Item 3: "*He referenced Section* ~~***4.18***~~ ***418*** *of the City Charter …"*

Note: as the minutes correctly report, with regard to Item 3 (code amendment revising mixed use minimum residential density standard): "*Discussion followed regarding an existing procedure for rounding numbers within the Zoning Code.*"

I continue to think the proposed code amendment should include language explaining exactly how the allowable range of residential units is to be calculated using the numbers provided in the tables. NBMC Section 20.12.020 ("Rules of Interpretation") turns out to provide clear guidance on how the *maximum* allowable number of residential units is to be determined, but none on how the required *minimum* number is to be rounded. This is because Subsection C.1 states that a fractional residential unit result should be *rounded down* when calculating *maximum allowed* units and Subsection C.2 says that all other fractional results should be *rounded up* (unless otherwise specified), but Subsection C.2 says it is not to be used for residential density calculations.

Since the amendment was proposed to deal with situations in which the minimum required unit count was too high to be implemented, I would guess the intention is for the result of that calculation to be rounded down, but that needs to be made clear to avoid unnecessary disputes.

Since the numbers used in the calculations are referred to as "lot sizes" (rather than floor areas) it is also unclear from the proposed amendment if there is a minimum floor area that has to be devoted to each required residential unit in these mixed-use developments, or if that is covered elsewhere in the NBMC.

Item No. 2 Newport North Center Monument Signs Appeal (PA2012-168)

I agree with the objections raised by Councilmember Daigle in her memorandum of appeal, and would go beyond that to say that even if the project had merit, I do not think a modification permit is the proper mechanism for granting deviations from the development standards imposed by PC text, such as the North Ford Planned Community District Regulations (PC-05, of which the subject property is Area 3).

Like Councilmember Daigle, I find unfathomable the Planning Division's reasoning that deviations from PC text standards can be granted on the basis that they are "consistent and comparable with [development at] other commercial properties located citywide" (Section 3 of draft resolution, proposed Fact in Support of Finding A.1). To me, that defeats the purpose of the PC text, which, as I understand it, is to impose development standards unique to a particular project. That uniqueness is completely lost if anything similar to development elsewhere in the City can be approved.

The idea that deviations from the PC standards can be granted willy-nilly through modification permits also defeats the intent of a "Planned Community." To me, the proper mechanism, and the only way to maintain a coherent vision governing future development in the District, is to correct the PC text to allow the proposed development (if such development is deemed suitable).

And that principle seems already to be embodied in Title 20 of the Newport Beach Municipal Code. Chapter 20.52 says the purpose of Modification Permits is to "*is to provide relief from* ***specified development standards of this Zoning Code***" (Subsection 20.52.050.A), *not* to provide relief from separately adopted and voluntarily agreed to PC text standards. PC development standards are covered by Chapter 20.56, which provides its own mechanism for modifications: in the absence of other directions in the PC text, that mechanism is by amendment of the Development Plan pursuant to Subsection 20.56.050.E. The procedure is not difficult, and such amendments can be made "*as often as deemed necessary by the Council*," but (per Table 5-1 in Chapter 20.50) the changes are reviewed by the Planning Commission and approved by Council, *not* by the Zoning Administrator.

The presumed reason for this amendment mechanism, different from the modification permits used in non-planned community areas, is to maintain a "plan" whereby the same standards will be applied uniformly to all future development within the District.

In short, having agreed to be constrained by a particular PC text, I think the landowner/developer should be required to stay strictly within those constraints, subject only to future amendment of the PC text; although reviewing the North Ford Planned Community District Regulations it is evident to me that if The Irvine Company wanted to be a bad neighbor, the existing regulations would allow their tenants to install signage considerably more offensive than the current proposal (namely, restaurant pole signs, a 20-foot tall lighted multi-tenant directory sign, and lighted ground signs for each tenant facing each street frontage in lieu of a wall sign).

Is an amendment to the North Ford PC text desirable?

Like Councilmember Daigle, I am unable to see the rationale for wanting a new multi-tenant monument sign at the corner of Camelback and Bison, in addition to the one allowed by the PC text.

- The shopping center is probably used primarily by local residents, for whom the sign serves no obvious purpose.

- The new sign would announce only three of the tenant businesses, so those unfamiliar with the area may well not be able to tell if they have found the center they are looking for, or not.
- Motorists travelling eastbound on Bison will probably not see the sign until it is too late to do anything about it.
    - Although nothing on the sign warns motorists of that fact, once one has passed Camelback, there is no way to get into the center (access from Bison is blocked by the median and U-turns are prohibited at the signal where Bison crosses MacArthur).
    - For the few who know they need to turn, the sign may encourage unsafe last minute panic lefts onto Camelback.

As I argued at the Zoning Administrator hearing, what the center really needs is a simple sign with an arrow in the Bison median west of Camelback altering motorists that they need to turn left to access the Post Office, shopping center, etc. I also have difficulty understanding the intended purpose of having the names of just three tenants announced to travelers on southbound MacArthur, a different set of three announced to travelers on northbound MacArthur, and yet another set of three to travelers on eastbound Bison.

As to the proposed new sign location on the northeast corner of Bison and Camelback, as I also tried to argue at the Zoning Administrator hearing, the real eyesore currently there is the large above ground traffic signal control box (see photos on handwritten page 34 of the staff report). If a new monument sign is really needed, the City might consider negotiating to have that relocated downslope to a less prominent position on The Irvine Company property.

Applicant's Letter in Response to the Appeal (Attachment PC 8)

The letter from Shawna Schaffner of CAA Planning, contains a number of confusing mis-references to the Newport Beach Municipal Code (for example, on page 2 of 4, the references to Zoning Code "Section 20.42.010 E" and "20.41.010 E" are actually to 20.42.020 E), but more importantly it purposefully distorts and mischaracterizes the language of the current North Ford PC text.

The claim that "*the PC does not include monument signage*" (page 2 of 4) is at best disingenuous: the PC text simply uses the older term "*ground sign*." That term is used, but not defined, in the 2010 Zoning Code, and the two are apparently synonymous (see, for example, Subsections 20.90.110 D 3 b & c).

The letter is similarly disingenuous in suggesting the only real issue was permitting a sign 6" taller than allowed by the Zoning Code for non-planned districts. The real issue is that the PC text very clearly allows only one muli-tenant sign and The Irvine Company wants two. It might also be noted that the six foot height standard being referred to by Ms. Schaffner is apparently that given in Table 3-16 of Section 20.42.070, which also explicitly says that even in non-planned districts, only one freestanding sign is permitted per site.

Special Lighting Analysis by Linwood Engineering Associates

My preceding comments are only those of an interested member of the public, and although I am not a certified lighting engineer, I do have a both a bachelor's degree, with honors, and a doctorate, both in physics, from Caltech, and have professional experience in optical engineering. I therefore feel qualified to comment on the Special Lighting Analysis offered by Ms. Schaffner's consultant.

The first thing that struck me about the report was the statement on page 1 that "*This dramatic fall off is due to the Inverse Square Law, which states that light levels decrease exponentially with distance*." This suggests a profound ignorance of the fundamentals of the field on the part of the consultant. First, the inverse square law does not apply strictly to extended sources such as an illuminated sign, and second, an inverse square relationship would *never* be described as "exponential" (which is a completely different mathematical concept).

Next, the following pages refer to, and measure, the "*horizontal* illuminance," that is, the light energy per unit area detected by a light meter held horizontally, with the detector facing upwards toward the sky. This may be relevant to code regulations, but it does not address the neighbor's fundamental complaint, namely the light energy impinging on a bedroom window, that is on a *vertical* surface oriented towards the sign.

Finally, although the neighbors expressed their concern in terms of light energy coming into their bedroom windows (that is, would there be enough light to read a book by?), the Commission should be aware this is completely distinct from the concept of how bright the sign looks, and how distracting it is, when looking out the window at it. I have a similar situation looking across the Back Bay at Fletcher Jones, and on occasion at the playing field lights at UCI, and similar complaints have been raised about the brightly illuminated "sail" at the new Civic Center. Although the added light energy from these small distant sources is negligible at a great distance (one can't read a book by them), they are just as bright in the visual field, and just as distracting, as if one were a foot away.

Draft Resolution of Approval (Attachment PC 1)

Ms. Schaffner's deceptive reasoning has morphed into the statement on page 4 of the staff report that *"The North Ford PC does not prohibit more than one identification ground sign from being incorporated into a single sign."* That is at best wishful thinking assuming such a sign would be regarded as a "multi-tenant" sign, as I think any reasonable person would have to conclude it is. North Ford PC Area 3 Regulation E.3 on page 27 of the PC text (reproduced on page 41 of the 62 page staff report PDF) clearly calls out the specifications for a ***single*** multi-tenant directory sign, and the possibility this single multi-tenant sign might be a ground/monument sign is clearly implied by the clause in Regulation E.1.a exempting it from certain standards applicable to the allowed individual tenant ground signs.

As to the draft Resolution of Approval itself:

Section 1.3: This recital includes a typographical error in: "*where the North Ford Planned Community District Regulations restrict the property to **a** freestanding **signs** for project identification only*." This was evidently intended to read either "*to **a** freestanding **sign**"* or "*to freestanding **signs**."* I am also unable to find anything in the PC text supporting the statement that the freestanding signs are "*for project identification only*." On the contrary, they seem to be for tenant identification. The following sentence about a four foot height limit in the PC text is confusing at best, since that limit applies to individual tenant "*identification ground signs*" and the single allowed "*Multi-Tenant Directory Sign*" is explicitly exempted from that requirement and given a 20 foot height limit instead.

Section 1.4: Contains an additional typographical error: *"The Zoning Administrator **was** conditionally approved the application"* should read *"The Zoning Administrator conditionally approved the application."*

Section 3: I don't believe the italicized statement at the start of the section is correct, nor do I believe a Modification Permit is the proper avenue to legitimize the desired development contrary to the existing PC text.

Section 3.A: "Facts in Support of Finding" 1-3 are essentially saying the PC Development Regulations are irrelevant, and anything acceptable in other shopping centers in Newport Beach is acceptable here. For the reasons stated above, I am unable to accept that argument: it would render the PC text pointless.

Section 3.B: The unique circumstances detailed in this section should already be reflected in the PC text. If they are not, the PC text needs to be corrected.

Section 3.B.4 is ungrammatical.

Section 3.C is based on what I believe to be the mistaken belief that it is the Zoning Code that is being applied. The proposed development is constrained not by the Zoning Code, but by the North Ford Planned Community District Regulations.

Section E.4 confusingly makes it sound like the expanded MacArthur sign will advertise only three tenants ("*two only, multi-tenant project signs … no more than three tenants per sign*"). I believe it will advertise six (three on each side).

Item No. 3 441 Old Newport Medical Office Building (PA2011-056)

It is refreshing to see that on March 26, 2013, the City Council decided to send this matter back to the Planning Commission, having been told the "appeal" had been replaced with an application different from that on which the Commission had originally voted 7:0 to reject.

It is also refreshing to see staff being so scrupulous about proper noticing. In this case, the date was published, at least in the Daily Pilot, as "Thursday, April 3" leaving readers uncertain if it meant Thursday (April 4) or Wednesday (April 3). Again, it is good staff caught this (I did not), but another thing I found strange about the noticing is that I happened to be passing by the property on Friday, March 22, and noticed the property posted with ***two*** signs, one announcing the March 26 City Council hearing, and another announcing, with considerable certainty ("*a public hearing **will** be conducted*" rather than "*a public hearing **may** be conducted*"), the April 3 Planning Commission hearing. I found this strange because at that point the Council had not made the decision to ask the Commission to hear the matter. Although there is probably nothing illegal about announcing a hearing that may never happen, this certainly gives the impression staff assumes the outcome of City hearings to be foreordained. Like "Dewey defeats Truman," that does not seem to me to create a good public perception.

Regarding the "new" application being referred back to the Planning Commission for reconsideration, I must say that based on a quick reading of the staff report I am unable to immediately grasp how the present proposal differs in any substantial way from the previously rejected one. I would suggest two alternatives that *would* make the proposal different: (1) develop the two properties jointly with permanent internal vehicular access between the two; or (2) allow the applicant's building to be occupied only to the extent permissible based on the available on-site parking. Option (2) could be

realized by requiring the applicant to render some of the currently built office space "non-habitable," as has been done with Irvine Company properties in Newport Center, with an opportunity to revisit the condition if experience shows that under those circumstances the lot has sufficient capacity to support opening additional office space.

Item No. 4 Knight (PA2013-044) and Ou (PA2013-043) Residences

An extremely minor point about this appeal is that General Plan Policy NR 23.6 and the identical Coastal Land Use Plan Policy 4.4.3-18 contain the misspelling "***principle*** *structures*" where "***principal*** *structures*" was intended. This creeps into the staff report and draft resolutions.

A much more fundamental concern is how the objective of General Plan Policy NR 23.1, to "*site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource*" can be achieved by drawing stringlines on aerial photos, since the topography (the vertical variations in height) is not directly visible on those photos.

Of the many "Predominant Line of Existing Development" (PLOED) examples shown in the staff report, the only one that I think, to the average person, could be said to respect the topography is the dashed green line on page 34 of the 160 page staff report PDF, where a former Planning Director followed the 54 foot height contour of the canyon slope. I believe this idea that what we are seeking to limit is the creep of development down the slope (vertically) as seen from ground level, more so than horizontally out from the canyon edge, is the one favored by the California Coastal Commission (see, for instance, their debate over the Evensen residence on the cliff face below Ocean Boulevard); and I am concerned that the Planning Commission's recent decision to the contrary in the case of the Wardy residence on Irvine Terrace (setting a horizontal limit of development as seen from above, irrespective of how far down the slope it goes) may jeopardize the City's ability to certify its Coastal Implementation Plan.

I don't think the references to "stringlines" in the GP/CLUP resolve which of these interpretations of PLOED is intended: the distinction is a matter of whether the stringline is intended to be projected vertically down onto the landform (creating a horizontal limit) or projected horizontally (creating a vertical limit) or some combination of two (limiting development *both* horizontally *and* vertically).

My own view is that to preserve landforms the intention is to limit development both horizontally and vertically, however in addition to failing to be clear as to whether the projection is horizontal or vertical, the stringline standard "*where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property*" as currently written in the GP/CLUP does not seem to have been well thought out. Is it really intended to be rigidly applied when one or both of the adjacent properties is vacant? Or occupied only by a small outbuilding set well back from the canyon edge, even though that is not the predominant form of development in the area?

The proposed solution of applying the GP/CLUP standard with equal rigidity, but extending the stringline over multiple properties introduces still more flaws: in cases where the arc of development is concave facing the canyon as viewed from above, as it is here, each new approval will move the PLOED forward into the canyon, and the process will be continual because that approval will set a new, looser standard for the next round of development. Likewise, if the arc of development is convex, the stringlines drawn over multiple properties will continually pull the PLOED back away from

the canyon. In addition, drawing the line over multiple properties is contrary to the clear directive in the General Plan, and although modifications to the Zoning Code can be granted, alterations of the General Plan would seem more difficult.

Comments on Draft Resolution for 312 Hazel Drive (Attachment PC 1)

Section 2: In my view the claim of a categorical exemption from CEQA is erroneous since there is clearly a possibility of impacting the sensitive areas downslope, as acknowledged by Fact in Support of Finding 3.C-2. I do not believe, for example, that it is the intent of CEQA that a single family home could be built in such a way as to destroy ESHA or an archeological resource, or pollute a river, just because it is a single family home.

Section 3: I suspect this should be titled "*FINDINGS*" rather than "*REQUIRED FINDINGS.*" If they are "required" there should be some reference to the law that requires them.

Section 3.B: "*The development stringlines for* ~~***principle***~~ ***principal*** *structures and accessory improvements, as depicted in Exhibit A, are consistent with General Plan Policy NR23.6 and CLUP Policy 4.4.3-18*." This statement would not seem to be factually correct, for the GP/CLUP Policies do not allow drawing the stringline over multiple properties.

Section 3.B-1: "*The principal structure stringline is drawn between the nearest adjacent foundation of the existing* ~~***principle***~~ ***principal*** ~~***structuresat***~~ ***structures at*** *308 and 320 Hazel Drive*. *The accessory improvement stringline is drawn between the existing decks located on* ***adjacent*** ~~***propertiesat***~~ ***properties at*** *308 and 320 Hazel Drive.*"

Section 3.C-1: "*The canyon development stringlines follow the topographic contours of Buck Gully* …" This statement does not appear to be factually correct. As illustrated in Exhibit A, the 70 foot contour matches the green string line at the two ends, but deviates from it very significantly in the middle. In fact, in the middle, as seen from overhead the 70 foot contour is much closer to the blue stringline than to the green one.

Comments on Draft Resolution for 316 Hazel Drive (Attachment PC 2)

My comments on this resolution are essentially the same as on the previous one.

Applicability of Categorical Exclusion Order E-77-5

A final comment: The statement on page 4 of the staff report that "*Development of single-family residences on these lots does not require Coastal Development Permits provided the development is consistent with Categorical Exclusion Order E-77-5*" is true, however under the terms of that order, eligibility is contingent upon the development being consistent not with the current Zoning Code, but rather with the Zoning Code that was in effect on August 25, 1977 when the Exclusion order was issued. I do not know if that condition is met here, or not.